

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**ARBAH HOTEL CORP. d/b/a
MEADOWLANDS VIEW HOTEL**

and

**Cases 22-CA-257539
22-CA-259975**

**NEW YORK HOTEL AND
MOTEL TRADES COUNCIL, AFL-CIO**

**PROPOSED FINDINGS OF FACT OF ARBAH HOTEL CORP.
FOR THE NATIONAL LABOR RELATIONS BOARD
HEARING OF JANUARY 20-21, 2021**

Arbah Hotel Corp. d/b/a Meadowlands View Hotel (“Arbah” or the “Hotel”), submits the following proposed findings of fact in connection with the hearing conducted on January 20 and 21, 2021 before Hon. Jeffrey Gardner, A.L.J.

1. The charges brought by the General Counsel (“GC”) against Arbah were primarily based on the broad layoffs of employees (union and non-union) instituted by Arbah at Meadowlands View Hotel on February 29, 2020.
2. Arbah laid off a number of its employees in response to the sharp decline in revenue that the Hotel experienced in the beginning of 2020, and the forecasted drop in revenue for the remainder of 2020. (Wysocki testimony, Respondent Exh. “3” and “4”).
3. The Covid-19 pandemic limitations on travel caused an emergency for Arbah and most others in the hotel business.
4. The hospitality industry was devastated by the pandemic from the beginning of 2020 through the entirety of the year. (Respondent Exh. “1” and “2”).

5. Per a release from the Department of Labor, the conditions facing Arbah were not unique:

In the week ending March 21, the advance figure for seasonally adjusted initial (unemployment) claims was 3,283,000, an increase of 3,001,000 from the previous week's revised level. This marks the highest level of seasonally adjusted initial claims in the history of the seasonally adjusted series.

(Respondent Exh. "1").

6. The Oxford Economics American Hotel & Lodging Association issued a report in March, 2021 stating that the hotel industry "is facing an abrupt and unprecedented drop in hotel demand that is gaining pace and getting progressively deeper and more severe week by week". (Respondent Exh. "2"). That report found that nearly 4 million hotel industry employees were projected to lose their jobs or have already been furloughed. (Id.).

7. The Hotel experienced a significant decline in occupancy over the first three months of 2020 as compared to the occupancy figures for 2019. (Respondent Exh. "3" and "4"; Wysocki testimony).

8. Arbah had lost many reservations due to the pandemic. As a result, the Hotel closed all of the rooms on several of its floors. Since March 15, 2020, the Hotel has averaged less than 5% occupancy of its total of 250 rooms, with many nights experiencing occupancy of fewer than 5 rooms. (Respondent Exh. "3" and "4"; Wysocki testimony).

9. As of March, 2020, Arbah's sales were down approximately 90% from the 2019's sales figures. (Respondent Exh. "3" and "4"; Wysocki testimony).

10. The Governor's directive in March, 2020 required Arbah to shut down the restaurant located in the Hotel and Arbah lost all revenue that it had previously received from the operation of the restaurant.

11. The Hotel has 250 rooms, which, at full occupancy equates to more than 7,500 rooms available over the course of a month. (Wysocki testimony).

12. Arbah's monthly occupancy rates for 2020 were significantly reduced from its level of full capacity (approximately 7,500 rooms per month). The table below shows the total occupancy and revenue and average nightly occupancy for the Hotel from January to December, 2020.

<u>Month, 2020</u>	<u>Total Occupancy</u>	<u>Average/ Night</u>	<u>Revenue</u>
January	1143	37	90,736
February	1109	38	89,813
March	695	22	60,345
April	153	5	16,089
May	163	5.4	18,890
June	255	8.5	28,480
July	225	7.25	23,698
August	229	7.3	25,801
September	276	9.2	26,066
October	220	7	20,159
November	217	7.2	21,125
December	173	5.5	17,117

Total room receipts April-December, 2020 = \$ 197,425

Average receipts per month (April-December, 2020) = \$ 21,936.11

(Respondent Exh. "3" and "4"; Wysocki testimony).

13. The Hotel generated less revenue in January and February, 2020 than the monthly payroll incurred by the Hotel during that time. (Respondent Exh. "3" - "5"; Wysocki testimony).

14. Arbah's average monthly payroll prior to the layoffs was approximately \$100,000. That figure is for payroll only and does not include other maintenance and standard monthly

expenses including taxes and utilities. The Hotel's payroll expenses for the period before and after the layoffs are as follows:

Payroll

Total payroll from April-December, 2020 = \$ 200,224

Average monthly payroll (April-December, 2020) = \$ 22,247

Payroll December 2019 – March, 2020 = \$ 345,755

Average monthly payroll = \$ 86,438

(Respondent Exh. "5").

15. Independent of the pandemic, the Hotel incurred additional debt obligations during the last quarter of 2019 that remain as accounts payable. (Wysocki testimony).

16. The decision to implement layoffs was borne out of an effort of the employer to preserve its business operations (albeit in a modified capacity) by reducing payroll expenses. As stated in the termination notice, the Hotel cited "market demands" and "profitability issues" as the basis for the decision. (Wysocki testimony; GC Exh. "39").

17. As of March 30, 2020, Arbah had very few employees on site at a given time. This was due to the fact that the Hotel averaged about 5 rooms occupied per night since March 13, 2020. (Respondent Exh. "3" – "4"; Wysocki testimony).

18. The actions of Arbah affected non-union employees as well as Union employees. Management was also impacted as the vast majority of staff has been laid off. Non-union employees at the front desk and in areas of management were laid off during the period from March 1st to June 1st, 2020. (GC Exh. "40" – "42"; Wysocki testimony; Respondent Exh. "5").

19. Non-union employees who were terminated around the time of the layoffs in 2020 include employees named Afaf, Marilyn, Francine, Paula and three front desk employees. (GC Exh. “40” – “42”; Wysocki testimony).

20. The layoffs were not implemented as retaliation against bargaining unit employees. (Wysocki testimony).

21. By January, 2020, Arbah became unable to pay its operating costs and existing debt obligations from the revenue generated from the Hotel. At full staffing, the Hotel’s monthly operating costs including payroll totals of approximately \$125,000. The Hotel has operated at a large monthly deficit since January, 2020. (Wysocki testimony; Respondent Exh. “3” – “5”).

22. As of February 29, 2020, Arbah contracted with independent contractors to fill the diminished needs for services at the Hotel and to effectuate the winding down of the operations due to the pandemic. By using independent contractors, Arbah had more flexibility to fill its needs without having to continue to pay a full payroll as though not in the face of a completely unique and dire situation. (Wysocki testimony; GC Exh. “28” – “38”).

23. The Hotel sought to reduce its expenses by using independent contractors for a short period of time. (Wysocki testimony).

24. Arbah’s use of independent contractors lasted for less than one month as sales dropped dramatically in early March following the Governor’s directive. (GC Exh. “28” – “38”).

25. The Hotel has not used independent contractors since April, 2020. (GC Exh. “32” – “38”).

26. Counsel for Arbah communicated with counsel for the Union on several occasions after the layoffs. There were several telephone conferences during which the economic standing

of the hotel and the financial downturn due to Covid-19 were discussed. (GC Exh. “16” – “25”; Bokerman testimony; Wysocki testimony).

27. Counsel for the parties exchanged proposals for a potential collective bargaining agreement. (GC Exh. “43” and “44”; Wysocki testimony; Bokerman testimony).

28. Arbah provided its reasoning for the decision to effectuate layoffs to the Board in response to the charges filed by the Union. In that response, Arbah stated that it was unable to continue to pay monthly payroll based on the drop in its revenue. (Wysocki testimony).

29. As part of that response, Arbah attached records showing its declining occupancy in early 2020 and after the layoffs due to Covid-19. (Wysocki testimony; Respondent Exh. “3” and “4”).

30. In response to the Union’s request for information and documents, the Hotel provided a list of its employees identifying each employee’s department, date of birth, date of hire and other information. (Wysocki testimony).

31. The Hotel has not refused to bargain with the Union. (GC Exh. “43” and “44”; Wysocki testimony, Bokerman testimony).

32. The Hotel has not withdrawn recognition of the Union. (Wysocki testimony; GC Exh. “16” – “25”).

33. During the hearing, none of the witnesses presented in the General Counsel’s case-in-chief had any facts to dispute that Arbah’s decision to lay off employees was motivated by economic hardship and business necessity.

34. No witness testified that the layoffs were undertaken based on a discriminatory motive by Arbah.

35. During the meeting of bargaining unit employees that was recorded, Mark Wysocki stated that the reason for the layoffs was that the Hotel was unable to pay its expenses including payroll due to the loss of revenue.

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